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4 November 1953

*Self file 730-
EPO 10450*

Honorable Allen W. Dulles
Director, Central Intelligence Agency
Washington 25, D. C.

Dear Mr. Dulles:

This will acknowledge receipt of your letter of October 12, 1953, with respect to your authority to provide one of your employees a hearing before a Security Hearing Board consisting of members selected from the Roster established by the Civil Service Commission to implement the administration of Executive Order 10450 and the Act of August 26, 1950.

You state that you have an employee against whom derogatory allegations have been made which "make it imperative that his case have the most complete and impartial review that can be obtained under the President's program." You also state that you have determined that the suspension of that individual is not necessary or desirable in the interests of the national security, but that you are anxious to have all the information pertaining to this individual reviewed by "outside, impartial persons of proper qualifications" and that it is your belief that such a review and re-evaluation is essential under the circumstances.

Neither the Act of August 26, 1950, nor Executive Order 10450 prohibits a hearing such as you contemplate. While the Act does provide that a certain category of employees be given a hearing, "after his suspension and before his employment is terminated under the authority of this Act", there is no prohibition against giving a hearing of that type to anyone who has not been suspended. (Emphasis supplied.) It is, of course, possible that the Civil Service Commission or any of the members selected may object to such a hearing on the ground that Security Hearing Boards can only be provided after suspension under the Act. However, under the circumstances set forth in your letter there is little likelihood of such objections being raised. Further, you indicate that you have reviewed the case and have determined that suspension is not necessary or desirable in the interests of the national security. Under such circumstances section 6 of the Executive Order does not require you to suspend the employee.

A difficulty would present itself in the event that after a hearing before such a hearing board and an unfavorable recommendation by such board, you may reach the conclusion that the services of this employee should be terminated. Should this happen, the employee would have the right, under the Act of August 26, 1950, to demand that he first be suspended, that he be given a statement of charges within 30 days after his suspension, that he be given 30 days in which to file statements and affidavits in refutation of such charges, that another hearing be held and that you then review his case and furnish him a written statement of your decision.

This difficulty could be obviated by resorting to a method which has been considered by another agency, namely, by the execution of a waiver by the employee in question. The waiver should include a written statement that the hearing, to be held without suspending the employee, and the procedure relating to it are to be regarded as equivalent to and in full satisfaction of the rights afforded suspended employees under the Act of August 26, 1950, Executive Order 10450, and the Personnel Security Regulations of your Agency. It is the view of the Department that the execution of such a waiver would probably operate as a bar to any claim by the employee of the type described in the in the preceding paragraph.

The foregoing is based on proceeding pursuant to the Act of August 26, 1950. However, nothing in that Act or Executive Order deprives any agency of such other powers as it may have to protect its security.

Sincerely,

/s/

Herbert Brownell, Jr.
Attorney General